EXHIBIT 6
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MPMCSA

MONTANA PETROLEUM MARKETERS
& CONVENIENCE STORE ASSOCIATION

March 8, 2007

SENATE BILL 67

Information provided by Ronna Alexander – Executive Director

Review of Federal Trade Commission report on price gouging.

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CONCLUSIONS OF FTC INVESTIGATION OF GASOLINE PRICE MANIPULATION AND POST-KATRINA PRICE INCREASES

http://www.ftc.gov/reports/060518PublicGasolinePricesInvestigationReportFinal.pdf

The investigation was ordered by Congress in 2005. The final report was issued in the spring of 2006.

Summary prepared by Montana Petroleum Marketers and Convenience Stores Association (1/9/07)

Summary statements followed by cites to page number in report.

- The investigation did not produce evidence that oil companies reduced inventory in order to manipulate prices or exacerbate the effects of price spikes due to supply disruptions. (viii).
- Refining capacity has remained at competitive levels and the refining industry remains relatively unconcentrated, leading to the conclusion that unilateral or coordinated attempts among refiners to manipulate prices was unlikely. (16-20).
- The investigation also revealed no evidence of price manipulation at the refining level. (20).
- The investigation concluded that current regulation and competition provide constraints on pipeline owners' ability to engage in anticompetitive conduct. (30).
- The investigation found very limited potential for firms to manipulate gasoline prices by exploiting infrastructure constraints in pipelines, marine vessels, or product terminals. (43).
- The investigation found no evidence that firms have made inventory decisions in order to manipulate prices. (49).
- The post-Katrina and Rita gasoline price increases were roughly in line with increases predicted by a standard supply and demand model of a competitive market. (62).
- Katrina forced a loss of U.S. refining capacity of 13%; Rita forced a loss of U.S. refining capacity of over 26%. (63-4).
- Nationally, the increase in gasoline prices after the hurricanes resulted from this dramatic reduction in supply. (66).
- In analyzing the reduction in supply caused by the hurricanes, the investigation projected that gasoline prices should have increased more in September and October 2005 than actually occurred. (67).
- The Mountain states had a sizeable price increase after Katrina, but (in prior weeks) had been below, by an unusual amount, the predicted price. (71, 97, 104-5).
- Changes in the cost to supply different regions of the country as a result of the hurricanes appear to explain much, if not all, of the gasoline price increases in the East Coast, Midwest, and Gulf Coast. (71-2).

- The investigation found no evidence of either an explicit agreement or tacit understanding among gasoline wholesalers to restrict output and increase prices in the aftermath of Katrina—the evidence was inconsistent with a collusion hypothesis. (103).
- Post-Katrina, gasoline retailers were uncertain about when and at what price they would obtain their next supplies. Some were facing rapidly dwindling inventories. Further, demand was highly uncertain due to unexpected panic buying. (107).
- Some of the highest gasoline prices following the hurricanes occurred when stations were running out of supplies, were uncertain about when they would be re-supplied or at what price, were trying to ration their dwindling inventory, or were trying to curtail panic buying. (110).
- One national retailer closed its stations in Florida because the firm could not afford to re-supply the stations without either selling gasoline at a loss or risking that it would violate the state's anti-gouging laws. (110).
- Cost-related factors explain at least the vast majority of the increase in average wholesale and retail prices that occurred after Katrina. (113).
- If gasoline prices are constrained at an artificial level for any reason, the economy will work inefficiently and consumers will suffer. Any type of price cap, including a constraint on raising prices in an emergency, risks discouraging the kind of behavior necessary to alleviate the imbalance of supply and demand. A temporary price cap may have an especially adverse effect on incentives as producers withhold supply in order to wait for the end of the cap. The result may be long gasoline lines and shortages. (183-4).
- Current antitrust laws are not designed to prevent prices from increasing; rather, they are designed to prevent firms from using market power to raise prices artificially. (185).
- The current state and federal antitrust laws protect consumers from abuse by single-firm conduct such as the illegal maintenance or acquisition of monopoly power. (188).
- Collusive action to charge higher prices may also be prosecuted under existing antitrust laws, whether the activity occurred during a period of emergency or not. (189).
- There is one outstanding example of collusion in the petroleum industry: OPEC (Organization of Petroleum Exporting Countries). OPEC's collusive activities in setting production quotas would be illegal if undertaken by private companies. (185).
- During the supply disruptions caused by the hurricanes, the wholesale costs of gasoline spiked sharply due to the severe shortages, so that retailers anticipated paying substantially more for their next shipment of gasoline. Thus, even though retailers were selling gasoline that already was in their tanks (and already paid for), they increased their retail prices based on anticipated higher replacement costs. Other station owners, however, stated their belief that they would run out of gasoline quickly if they did not raise their prices when their retail competitors did. With limited supply available, retailers had to choose either to run out of product or to raise prices. (195).

- Higher prices create incentives for suppliers to send more product into the market, while also creating incentives for consumers to use less of the product. If such pricing signals are not present or are distorted by legislative or regulatory command, markets may not function efficiently and consumers may be worse off. (196).
- The Commission's examination of gasoline price gouging legislation and enforcement efforts indicates that the offense of price gouging is difficult to define. This lack of consensus on which conduct should be proscribed could yield to legislation that would leave businesses with little guidance on how to comply and would run counter to consumers' best interest. (196).
- <u>The Commission could not conclude that price gouging legislation would produce a net benefit for consumers</u>. If legislation is passed, it should clearly define the offense of price gouging, account for increased costs, including anticipated costs, and provide considerations for local, national, and international market conditions that may be a factor in a tight supply situation. (196-7).
- The Commission concluded that holding prices too low for too long in the face of temporary supply problems risks distorting the price signal that ultimately will restore supply and demand balance. If supply responses and the market-clearing price are not considered, wholesalers and retailers will run out of gasoline and consumers will be worse off. Supply and demand forces are the ultimate drivers of prices to consumers. (197-8).
- The concurring statement of Commissioner Jon Leibowitz concluded that the vast majority of retailers raised prices after the hurricanes based on what they paid for supply or in anticipation of increased replacement costs. "If there is any villain in the long lasting saga of high oil prices, though, it is OPEC." However, OPEC is not the only reason for the recent steep climb in prices, other contributing factors include: increased demand in China and India, complicated environmental requirements, and American over-dependence on both foreign oil sources and fuel-inefficient automobiles. "But OPEC's permissible price fixing will surely continue to bedevil American businesses and consumers well into the future." Commissioner Leibowitz concluded, "Petroleum industry pricing and gas price manipulation are enormously complicated matters—ones not subject to simple explanation, even absent the disruptive effects of a major natural disaster." (2-3).

The Federal Trade Commission (or FTC) is an independent agency of the United States government, established in 1914. Its role is to promote consumer protection by eliminating and preventing anticompetitive business practices.

The FTC is headed by five Commissioners, who are nominated by the President and confirmed by the Senate. Under the FTC Act, no more than three Commissioners may be from the same political party.